



Applied Behavior Analysis Provider Workgroup

REPORT TO THE GOVERNOR AND LEGISLATURE OF SOUTH DAKOTA

December 1, 2015

Findings and
recommendations
regarding
certification and
licensure of
applied behavior
analysis therapy
providers



Applied Behavior Analysis Provider Workgroup

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Workgroup Members

Membership as Required by Law

- Senators (2)
- House of Representatives (2)
- Family members of children with autism spectrum disorders (2)
- Providers of autism services certified by national Behavior Analyst Certification Board (2, including at least 1 at supervisory level)
- Provider of other services to children with autism (1)
- Licensing board executive (1)
- Health insurance representatives (2)
- State agency representatives (4, with 1 from each of the departments of Human Services, also chairperson; Social Services; Education; and Labor and Regulation)

Members as Appointed by Governor

Senators

- Sen. Terri Haverly, District 35
- Sen. Jeff Monroe, District 24

Representatives

- Rep. Julie Bartling, District 21
- Rep. Tom Holmes, District 14

Providers of applied behavior analysis autism services (1 at supervisory level)

- Vicki L. Isler, Ed.D., BCBA-D, LifeScape
- Pamela G. Osnes, Ph.D., BCBA-D

Health insurance representatives

- Dr. Paul Amundson, M.D., Dakotacare
- Mike Demand, Vice President, Wellmark Health and Care Management

Provider of other services to children with autism

- Brittany Schmidt, Autism Behavioral Consulting, LLC

Licensing board executive

- Carol Tellinghuisen, Executive Secretary

Family members

- Michelle Powers
- Lisa Stanley

State agency representatives

- Sarah Aker, DSS
- Marcia Hultman, DLR
- Ann Larsen, DOE
- Gloria Pearson, DHS, ABA Provider Workgroup Chair

Executive Summary

In 2015 the South Dakota Legislature passed Senate Bill 190 to clarify health coverage for applied behavior analysis, and to establish the Applied Behavior Analysis (ABA) Provider Workgroup. Governor Dennis Daugaard signed the bill into law March 30, 2015.

The purpose of the ABA Provider Workgroup, operated under the Department of Human Services, was to advise and make recommendations by Dec. 1, 2015, to the Governor and the Legislature regarding the certification and licensure of applied behavior analysis therapy providers. The following report constitutes the findings and recommendations of the workgroup.

Findings

State licensure based on national certification by The Behavior Analyst Certification Board, Inc. (BACB), would provide adequate protection for South Dakota citizens.

- Forty-three states require insurance coverage for autism spectrum disorders (ASD); 24 states require state oversight beyond the certification provided by the BACB. As of this report, South Dakota was not one of those 24 states.
- The BACB imposes many of the standards critical to the provision of quality ABA therapy via the certification process. These include qualification standards, exam requirements, continuing education requirements, the complaint investigation process, and professional standards.
- State oversight to provide additional protection of South Dakota citizens in the form of licensure is necessary.
- Providing ABA licensure through an existing South Dakota licensing board provides advantages, including shared operational costs and infrastructure, a quicker path to ABA licensure and oversight, and additional protections through background checks.

Recommendations

The ABA Provider Workgroup recommends licensure of behavior analysts to protect South Dakota citizens and to provide legitimacy for providers of service.

Findings

State licensure based on national certification by The Behavior Analyst Certification Board, Inc. (BACB), would provide adequate protection for South Dakota citizens.

Summary

The South Dakota Legislature passed Senate Bill 108 in 2014, requiring a study of services and insurance coverage for the treatment of autism spectrum disorders for children. The resulting study, conducted by Health Management Associates, determined intensive behavioral intervention services, such as applied behavioral analysis, along with certain medications are the leading evidence-based treatments for behavioral intervention.

During the 2015 session, the Legislature passed Senate Bill 190 to clarify health coverage for applied behavior analysis and to establish the Applied Behavior Analysis (ABA) Provider Workgroup. Governor Dennis Daugaard signed the bill into law March 30, 2015.

The law stipulates that every insurance policy, contract, certificate, or plan subject to its provisions shall provide coverage for applied behavior analysis for the treatment of autism spectrum disorders among children ages 18 and younger. It further states that practitioners of applied behavior analysis must be licensed medical doctors, licensed psychologists, or have a master's degree or a doctoral degree and be certified by The Behavior Analyst Certification Board, Inc. (BACB), with a designation of board-certified behavior analyst.

The purpose of the ABA Provider Workgroup, then, was to study the certification and licensure of applied behavior analysis therapy providers. One of the primary questions facing the workgroup was whether or not to create a licensing board in South Dakota specific to ABA therapy providers. The workgroup also considered whether the BACB would provide adequate protection of South Dakota citizens as an oversight agency.

The ABA Provider Workgroup concludes that state licensure based on national certification would provide adequate protection for South Dakota citizens.

Most States Requiring Insurance Coverage for Autism Spectrum Disorders Provide State Oversight

Forty-three states currently require insurance coverage for autism spectrum disorders (ASD); 24 states provide state oversight of applied behavior analysis (ABA) providers. Twenty-three states license ABA providers, while one – Ohio – certifies them. Eleven of the 24 states, or nearly half, began providing oversight since 2014, indicating a significant trend toward state oversight. As of this report, South Dakota was not one of those 24 states.

Oversight is typically based on national certification provided by The Behavior Analyst Certification Board, Inc. (BACB). The professional, academic, and ethical standards used by the national board for certification were deemed sufficient by the ABA Provider Workgroup. Some of the key criteria for certification as a behavior analyst include the following:

Current Eligibility Standards

Coursework Requirement	270 classroom hours in behavior analysis <ul style="list-style-type: none"> • Ethics – 45 hours • Basic concepts & principles – 45 hours • Behavioral methodology – 45 hours • Applied behavior analysis – 105 hours • Discretionary behavioral content – 30 hours
Degree Requirement	A minimum of a master's degree from an accredited university that was either: <ul style="list-style-type: none"> • Conferred in behavior analysis, education, or psychology; or • Conferred in a degree program in which the candidate completed a BACB-approved course sequence.
Experience Requirement	1,500 hours of <i>Supervised Independent Fieldwork</i> (This is one of three means by which the experience requirement can be fulfilled. Others include intensive and nonintensive university practicums.)

BACB Examinations

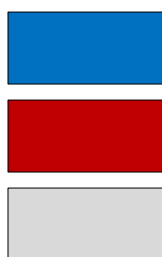
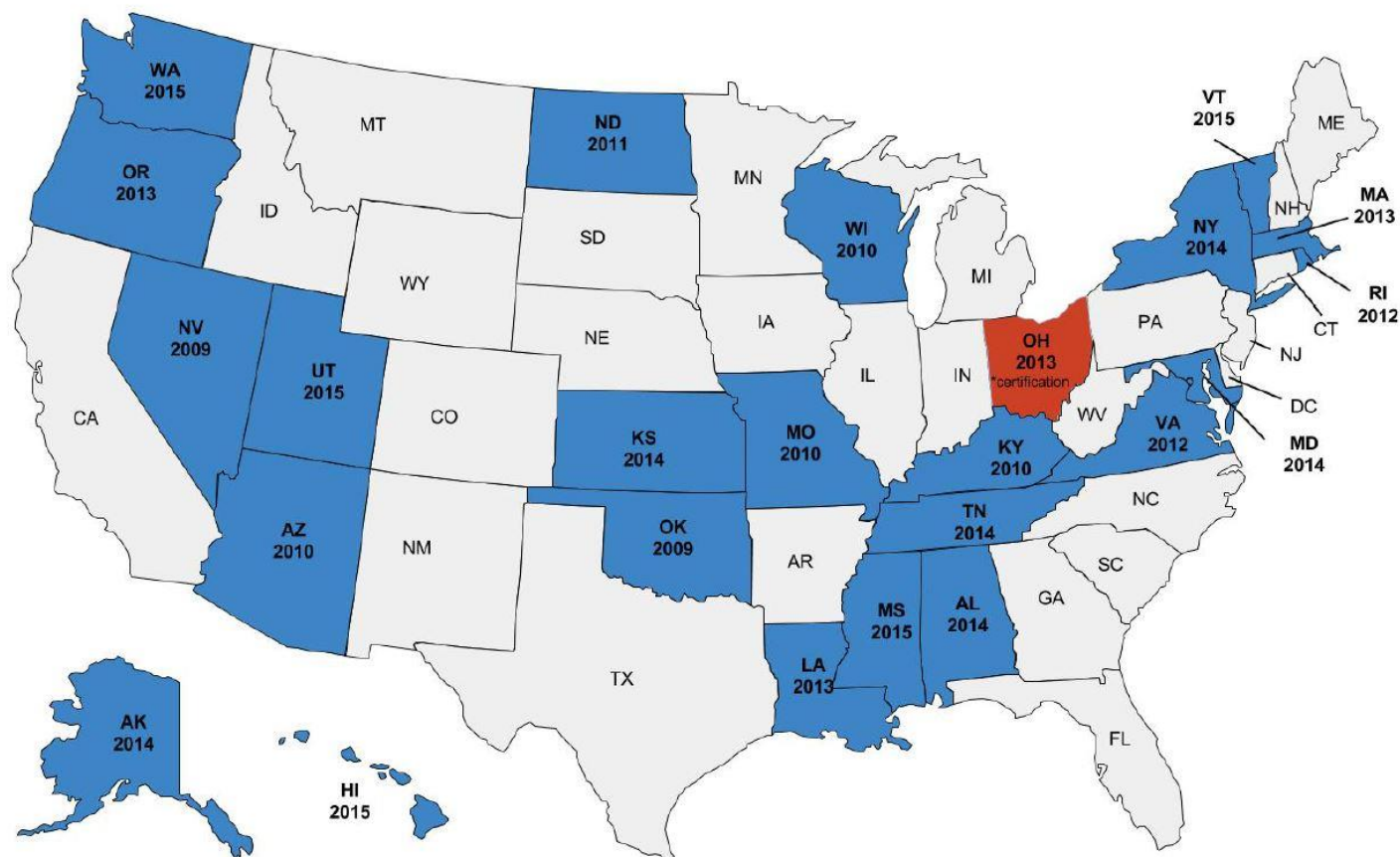
- All examination procedures based on “*Standards for Education and Psychological Testing*”
- Multiple-choice examination – 150 questions
- Based on BACB task lists
 - List of job competencies
 - Certificant survey for content validation
 - Subject matter expert review

Maintaining Certification

- Recertification every two years
- 32 hours of continuing education (four in ethics) every two years

In addition, The Behavior Analyst Certification Board, Inc. (BACB), uses a professional and ethical compliance code for behavior analysts and may initiate disciplinary actions for violations. However, it was agreed by the ABA Provider Workgroup that state oversight would provide important additional protections for the citizens of South Dakota, including but not limited to background checks with fingerprinting for individuals providing direct services to clients and direct state participation in potential disciplinary actions for licensees.

State Regulation of Behavior Analysts



= State oversight via licensure

= State oversight via certification

= No state oversight; state may or may not have insurance for ASD in statute. Forty-three states currently require insurance coverage for ASD; 24 states provide state oversight of ABA providers; 11 of the 24 states, or nearly half, began providing oversight since 2014, indicating a significant trend toward state oversight.

Recommendations

The Applied Behavior Analysis (ABA) Provider Workgroup recommends licensure of behavior analysts to protect South Dakota citizens and to provide legitimacy for providers of service.

Summary

The ABA Provider Workgroup reached early consensus on the necessity of licensure and certification of ABA providers, with national certification by The Behavior Analyst Certification Board, Inc. (BACB), acting as the foundation. Based on information from the South Dakota Legislative Research Council, the group recognized the regulatory framework of the national certification board could be adopted, but that in-state licensure was not only desirable for additional oversight but also necessary. Licensure for services is important for insurance billing and protection of the public. Research shows this type of early intervention is helpful, and the earlier the therapy is provided the better for children with autism.

Therefore, the workgroup identified three options for licensure:

1. State agency to serve as licensing authority;
2. Creation of new independent licensure board (attached to state agency); or
3. Join existing licensure board and increase scope of responsibility.

Of the 24 states currently providing oversight of behavior analysts, only two of those states issue licenses directly through a state agency (Alaska and Wisconsin). In addition, the workgroup found no applicable examples of state agencies in South Dakota directly issuing licenses.

In South Dakota, licensing boards are funded through licensing and renewal fees. In State Fiscal Year 2016, the lowest operating cost for a licensing board in the state was more than \$21,000, not including start-up costs. With only 19 certified behavior analysts in the state at the time of this report, the workgroup agreed the financial resources are neither available nor feasible for an independent board.

The ABA Provider Workgroup decided joining an existing licensing board was the best course of action along with the creation of an advisory committee of board-certified behavior analysts and a lay member

appointed by the Governor. This model offers structure and financial support for a profession still gaining a foothold in South Dakota while providing expertise in the field of ABA and advice on standards, fees, complaint resolution, discipline, and licensure of behavior analysts. This profession does not have enough licensed providers to sustain its own board at this time. Behavior analysts need a licensure home, even if temporary.

Precedent of Advisory Committee to Licensing Board in South Dakota

The ABA Provider Workgroup expressed interest in the use of an advisory committee to operate under an appropriate licensing board already authorized by statute. Before being able to commit to this recommendation, however, research was conducted to determine if there was precedent for this model in South Dakota.

This approach was used in the past by marriage and family therapists, currently recognized in South Dakota Codified Law Chapter 36-33. From 1995 to 2008, the marriage and family therapists functioned as an advisory committee to the Board of Counselor Examiners. This approach allowed practitioners with the appropriate training, education, and experience to provide advice to the counselor board.

At least one more example of this model exists in current state law. The State Board of Medical and Osteopathic Examiners appoint a physician assistant advisory committee to assist the board in the regulation of physician assistants (SDCL 36-4A-3.1).

Process

Creation of the Applied Behavior Analysis (ABA) Provider Workgroup was prescribed in law during the 2015 session of the South Dakota Legislature. Membership was outlined by perspective in Senate Bill 190; nominations for workgroup members were sought from the public, and membership was ultimately decided through gubernatorial appointment (see “Workgroup Members” section of this report).



The 16-member workgroup met three times in Pierre to research the licensure and certification of applied behavior analysis providers, establish its findings, and make a final recommendation to the Governor and Legislature by December 1, 2015:

- July 21, 2015 – Reviewed 2014 statewide autism study conducted by Health Management Associates; learned about national certification through presentation from chief executive officer of The Behavior Analyst Certification Board, Inc.; learned about practice of applied behavior analysis through presentation from ABA professional; reviewed information about how other states regulate behavior analysts.
- September 17, 2015 – Learned about how licensing boards operate in South Dakota through presentation from executive secretary of board of psychologist examiners; received opinions about licensure of ABA therapy providers during publicized public-input period; heard report on Legislative Research Council’s position on adoption of national certification board’s regulatory framework; reviewed options.
- October 21, 2015 – Reviewed discussion draft of potential legislation regarding an ABA licensing board; discussed next course of action and recorded pros and cons of it by perspectives of workgroup members and attending members of public; reached consensus decision about recommendation.

By the start of its third and final meeting, the ABA Provider Workgroup had reached several points of agreement. The group agreed state licensure of ABA providers is necessary, and also agreed the national certification board is the foundation for ABA providers. During the final meeting, the workgroup also agreed licensure through an existing state licensing board was the best course of action, with use of an ABA advisory committee being desirable. The advisory committee structure will provide support through expertise to the governing board.

Workgroup members worked through an exercise of identifying the pros and cons of operation under an existing board with an advisory committee structure. Participating stakeholders formed smaller groups for the exercise based on areas of interest – families, insurance, providers, state agencies, and legislators – and the following trends emerged:

- **Licensure is necessary** – Groups cited the importance of licensure as a tool to provide oversight of applied behavior analysis (ABA) to protect the public as well as protect the integrity of the field and promote growth of the profession. Also cited was the benefit of licensure as a prerequisite to insurance reimbursement and, consequently, provision of services to more clients.
- **Advisory committee to serve under existing licensing board** – Groups saw benefit in sharing costs and administrative overhead with an existing licensing board already recognized in statute. Groups also mentioned being able to build on an existing structure with some autonomy, the advisory committee being able to offer ABA expertise to the standing board, and the potential to establish a separate board in the future as pros. Legislators supported the plan to operate under an existing board, but were open to a plan to seek legislative authority and funding for an independent board if needed. Cons mentioned included the need to find the right board, whose members may not be knowledgeable about ABA, along with lack of official representation of behavior analysts on the standing board and unknown costs of operation.

Conclusion

The Applied Behavior Analysis Provider Workgroup recommends the following to the Governor and the Legislature of South Dakota:

1. That providers of applied behavior analysis, who are not licensed as medical doctors or psychologists, be licensed by a state licensing board;
2. Use of an advisory committee to operate under an appropriate licensing board already authorized by statute. The state licensing board would receive advice from the advisory committee appointed by the Governor, consisting of at least one lay person and at least three licensed behavior analysts; and,
3. Qualifications for licensure include the following requirements:
 - a) Certification by The Behavior Analyst Certification Board, Inc.;
 - b) No crimes of moral turpitude; and
 - c) Responsibility for the supervised paraprofessionals, who are background checked and fingerprinted and have no convictions for a crime of violence, as defined in SDCL 22-1-2(9), or a sex offense, as defined in SDCL 22-24B-1, or trafficking in narcotics.

